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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

NO. 148

JONES COAL COMPANY,
Petitioner,

v.

UNITED STATES OF AMERICA,
for the use and benefit of
RICHARD P. JAHN, TRUSTEE,
Respondent.

REPLY BRIEF OF PETITIONER

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It is admitted that there was an error in the Petition for Certiorari, in that the word "shall" was used in quoting Rule 25(c), Federal Rules of Civil Procedure, when "may" should have been used.

The respondent contends that, as a matter of fact, the charter of Air Comfort was reinstated prior to the entry of the order of substitution. If this had been true no need would have arisen for substitution. The district court and court of appeals did not consider this

alleged fact, but held only that where the state law held that a corporation's choses in action did not die upon revocation of the corporate charter, this legal holding was sufficient ground to permit the substitution, under Rule 25(c), of an assignee, despite the fact that there was no corporate plaintiff in existence on the date of the original judgment.

The denial of an oral hearing by the trial judge (12a) despite the requirement in the local rules (18a); the allowance of interest from October 22, 1962, in the judgment of November 23, 1964; the limited nature of the assignment (11a, lines 9-11); and the fact that the suit is a Miller Act suit, and the Travelers Indemnity Company, an indemnitor, is a defendant; have not been considered at all by the lower courts. The petition for certiorari attempts to express the question in its simplest form. Tennessee would have abated this suit, and would have required the real parties in interest to file in their own names. Does Rule 25(c) eliminate this requirement, despite the terms of Rule 17(b)?

Respectfully submitted,

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August 1966